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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MARK DAVID JORDAN,

Defendant and Appellant.

C067002

(Super. Ct. No. 62099807)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Having reviewed the record as required by *Wende*, we modify and affirm the judgment. We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

While investigating a reported theft, Roseville Police Officer Jeremy Guess followed defendant Mark David Jordan's car for about one-fourth of a mile. Defendant voluntarily

pulled his car over and Officer Guess went to speak with him. Defendant was nervous and shaking. He gave Officer Guess his California identification card because his driver's license had been suspended. Defendant consented to a vehicle search. In the trunk area of the car, Guess found a digital scale and two baggies containing cocaine. A canine officer conducted a search as well and found a third baggie containing cocaine underneath the casing around the gear shift. The total aggregate weight of the cocaine was over 27 grams. Defendant said he was taking the drugs to a buyer in the city who was going to take them to Las Vegas. Roseville Police Officer Jeff Kool testified as an expert and opined that, based on the quantity and the packaging, the drugs were possessed for sale.

Defendant was charged with transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)) and possession of cocaine for sale (Health & Saf. Code, § 11351), along with a misdemeanor count of driving a motor vehicle with a license suspended for driving under the influence of drugs or alcohol (Veh. Code, § 14601.2, subd. (a)). As to each of the felony counts, it was further alleged that defendant had sustained a prior conviction for transportation of a controlled substance (Health & Saf. Code, § 11370.2, subd. (a)) and had served a prior prison term (Pen. Code, § 667.5, subd. (b)).

Following a jury trial, defendant was found guilty on all counts. In bifurcated proceedings, defendant admitted the

prior conviction allegations. Defendant was sentenced to the low term of three years for transportation of cocaine, which was designated as the principal term. As to that count, the court struck the punishment for the prior drug conviction enhancement. Defendant was also sentenced to three years for possession of cocaine for sale, "stricken" pursuant to Penal Code section 654; a concurrent term of six months for the misdemeanor count of driving with a suspended license; and one year for the prior prison term enhancement. Defendant was awarded 168 days of actual credit and 168 days of conduct credit, for a total of 336 days of credit. Various fines and fees were imposed.

Appointed counsel set forth the facts of the case and requested this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

### **DISCUSSION**

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant. However, we note one error related to defendant's sentencing. As noted *ante*, the trial court ordered that the sentence on count two be "stricken" pursuant to Penal Code section 654. Specifically, the court stated: "Count Two, [Health & Safety Code section 11351. That is the 654, so that would be three years. 654 to Count One, which

means that it's the same behavior, so it cannot be imposed twice. That is true for the [Health and Safety Code Section] 11352[ conviction]. That is stricken pursuant to 654." The minutes and the abstract of judgment, on the other hand, show that the term of three years was imposed on count two and stayed pursuant to Penal Code section 654.

"[I]f a defendant commits two crimes, punishment for one of which is precluded by [Penal Code] section 654, that section requires the sentence for one conviction to be imposed, and the other imposed and then stayed."

(*People v. Deloza* (1998) 18 Cal.4th 585, 594; accord, *People v. Alford* (2010) 180 Cal.App.4th 1463, 1469.) A sentence must be imposed on each count, otherwise if the unstayed sentence is vacated, either on appeal or in a collateral attack on the judgment, no valid sentence will remain. (*Alford, supra*, 180 Cal.App.4th at p. 1469.) The stay is to be effective pending the successful service of sentence for the count that reflected the same conduct, at which time the stay is to become permanent. (*People v. Miller* (1977) 18 Cal.3d 873, 886.)

#### **DISPOSITION**

Execution of the three-year sentence imposed for count two, possession of cocaine for sale (Health & Saf. Code, § 11351), is ordered stayed, the stay to become permanent on completion of the sentence imposed for count one, transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)). As modified, the judgment is affirmed.

We need not order the trial court to prepare an amended abstract of judgment as the current abstract accurately reflects the judgment as modified.

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MURRAY, J.

We concur:

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NICHOLSON, Acting P. J.

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BUTZ, J.